IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Kamal Kishore Vs. State of Rajasthan
(1) D.B.Civil Writ Petition No..5051/2007

Pritam Singh Vs. State of Rajasthan
(2) D.B.Civil Writ Petition No.3356/2004

Jugal Kishore Vs. State of Rajasthan
(3) D.B.Civil Writ Petition No.4733/2004

Pritam Singh Vs. State of Rajasthan
(4) D.B.Civil Writ Petition No.5604/2004

Rajkumar Vs. State of Rajasthan
(5) D.B.Civil Writ Petition No.5842/2004

Madan Singh Vs. State of Rajasthan
(6) D.B.Civil Writ Petition No.664/2005

Kirayedaar Vyaparik Sewa Samti Vs. State of Rajasthan
(7) D.B.Civil Writ Petition No.952/2005

Girdharilal Vs. State of Rajasthan
(8) D.B.Civil Writ Petition No.2014/2005

International Electronics Vs. State of Rajasthan
(9) D.B.Civil Writ Petition No.2484/2005

Dungar Singh Vs. State of Rajasthan
(10) D.B.Civil Writ Petition No.2625/2005

Dr.Shyam Behari Gupta Vs. State of Rajasthan
(11) D.B.Civil Writ Petition No.5706/2005

Dr.Shyam Behari Gupta Vs. State of Rajasthan
(12) D.B.Civil Writ Petition No.5707/2005

Tara Chand Vs. State of Rajasthan
(13) D.B.Civil Writ Petition No.231/2006

Shankerlal Vs. State of Rajasthan
(14) D.B.Civil Writ Petition No.1506/2006

Birbal Ram Vs. State of Rajasthan
(15) D.B.Civil Writ Petition No.1875/2006

Jugal Kishore Vs. State of Rajasthan
(16) D.B.Civil Writ Petition No.2159/2006

Kalu Ram Vs. State of Rajasthan
(17) D.B.Civil Writ Petition No.581/2007

UNDER ARTICLE 226 OF

THE CONSTITUTION OF INDIA.

Date of Judgment: Dec.07, 2007

P R E S E N T

HON'BLE MR.JUSTICE P.B.MAJMUDAR

HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.M.C.Bhoot
Mr.M.R.Singhvi
Mr.S.L.Soni
Mr.M.L.Panwar
Mr.Arun Kalla
Mr.C.S.Kotwani
Mr.B.K.Vyas) for the petitioners.

Mr.N.M.Lodha, Additional Advocate General.

Mr.M.S.Singhvi
Mr.Vikas Balia
Mr.Om Mehta
Mr.R.K.Thanvi
Mr.Manish Pitaliya
Mr.Vinod Bhadu) for the respondents.

Mr.J.P.Joshi
Mr.Ashok Chhangani) for the interveners.

REPORTABLE BY THE COURT: (PER THANVI J.)

1. Two ancient maxims viz; (1) Judicis est jus dicere non dare: The judge's duty is to declare law and not to make it and (2) Talis interpretatio semper fienda est, ut evitetur absurdum et inconveniens, et ne judicium sit illusorium: That interpretation must be chosen which avoids an absurdity or inconvenience and which does not make a decision of court illusory, are coupled with the controversy involved in the present seventeen writ petitions, whereby the Constitutional validity of the Rajasthan Rent Control Act, 2001, hereinafter referred-to as "the New Act" in toto and Section 32(3)(a) of this New Act and Section 6 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, later styled as "the Old Act", have been challenged by declaring them as ultravires to the Constitution of India. Though different reliefs have been sought in these petitions but broadly, they are of three categories.

2. The relief sought in the first set of petitions is to declare the New Act as ultravires to the Constitution of India; in the

second set, relief prayed-for is to declare Section 32(3)(a) of the New Act as ultravires to the Constitution of India and the third set of petitions is about the relief as to declaring Section 6 of the Old Act as ultravires to the Constitution of India vis-a-vis to recall or refer for reconsideration to a larger bench, the judgment passed by this Court on 30.9.1999 in D.B.Civil Writ Petition No.1193/1997 "Khem Chand vs. State of Rajasthan reported in 1999(2) WLC (Raj) p.228, whereby Section 6 (2) of the Old Act has been declared as ultravires to the Constitution of India.

3. We have heard learned counsel for the parties at length including the learned Additional Advocate General and categorically scrutinized the case law cited. For the sake of convenience, first we take the contention of learned counsel for the petitioners challenging the validity of the entire New Act with regard to legislative competency and being ultravires to Article 14 of the Constitution of India. The controversy whether the relation of landlord and tenant pertaining to the house and building is to be included under the Entry XVIII of State List in Seventh Schedule of the Constitution of India or not by virtue of conflicting opinions of various High Courts, has been set at rest by later decision of the Supreme Court in Ashok Marketing Limited v. Punjab National Bank reported in AIR 1991 SC 885,

whereby the legislation relating to the relationship of landlord and tenant including the rent control will now fall under Entry VI of the Concurrent List in the Seventh Schedule of the Constitution of India and the State legislature is competent to enact the law on this subject under Clause (2) of Article 246 of the Constitution of India and being a subject of concurrent list, it has also received the assent of the President of India on 25.2.2003. Thus, the contention of the learned counsel for the petitioners that the Bill lacks legislative competence, is devoid of force.

4. Regarding the second contention of the learned counsel for the petitioners with regard to Constitutional validity of the New Act, it has been argued that the provisions of the New Act violate Article 14 of the Constitution of India, as it fails to provide equal protection of laws to the same category of tenants. In this regard, Mr.M.R.Singhvi, learned counsel has drawn our attention to various provisions of the Old Act and the New Act, especially with regard to applicability of the Act in a particular area or class, fixation of Rent, grounds for Eviction, Constitution of separate Rent Control Tribunals, Repeal & Saving Clauses, etc. The Old Act of 1950 has been repealed in the year 2001 after a lapse of more than 50 years and its objects and reasons were

broadly as follows:

> **"STATEMENT OF OBJECTS AND REASONS**
>
> The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act No.17 of 1950) has been in force for nearly five decades and during these years the situation prevailing with regard to the premises in the State has undergone a considerable change and as a result of changed scenario, the law relating to premises warrants change. This matter has been engaging attention of the State Government for the past several years and the matter was considered time and again from all angles.
>
> The existing law owing to feeling of insecurity among the landlords in getting the premises vacated, is impeding the growth of letable premises. Hence, adequate provision for timely vacation of premises as also determination of fair rent is the necessity of the hour. Certain inbuilt safeguards for tenants are also required to be retained and certain premises are required to be kept out of the scope of new law. It has, therefore, become necessary to replace the existing law relating to control of rent and eviction of premises."

5. Chapter 2 of the New Act dealing with the revision of rent under Section 6 and Chapter VIII dealing with repeal & saving clause under Section 32 of the New Act corresponding to Section 6 of the Old Act, have much been debated in the second and third category of petitions and will be dealt with later on. Rest of the provisions of the Old Act have been either amended or modified or repealed in the light of the Objects & Reasons given under the new Bill as indicated above. How far the Court can declare it to be ultravires to the Constitution of India, being

violative of Article 14, is a subject of decisive controversy in the present petitions.

6. The Constitution of India is a paramount law which represents the will of the people and is a mechanism under which laws are framed. In interpreting the Constitution, the court has to see that it is a documentation of the founding face of a nation and the fundamental directions for its fulfillment, whereas in interpreting a Statute, its pith and substance has to be looked into & the duty of the Court is to find the legislative intent. The general principle of interpretation and construction of Statute is that a court presumes its constitutionality and prefers an interpretation in favour of competency of the legislature. It is only when two meanings are inferred, whereby one results into the view of the legislature in effective result and the other results into manifest absurdity or futility or palpable injustice or anomaly, the Court should adopt the second view.

7. As enumerated in the Statements of Objects & Reasons of the New Act, it appears that while making the statement in the court by the Advocate General with regard to amendment in the New Act when the Constitutional validity of Section 6(2) of the Old Act was challenged in D.B.Civil Writ Petition No.1193/1997 "Khem Chand vs. State of Rajasthan" reported in 1999(2) WLC

(Raj) 228, the legislature also thought it fit that innumerable changes have been made in the state of premises, its construction value, insecurity in the mind of the landlords in getting the premises vacated which are required by them for their livelihood vis-a-vis safety of the tenants against the exorbitant hike in rent and also keeping certain premises out of the purview of this Act and thereby repealed the Old Law within its competence.

8. If we go by various Chapters of the New Act, Chapter 1 deals with preliminary matters about definition etc. and there is nothing in these five Sections of this Chapter which need any interpretation because it is neither absurd nor anomalous except Chapter 2 & 3, which have not been applied to certain premises and tenants. Chapter 2 & 3 deals with revision of rents and tenancy respectively and Section 32(3)(a) will be discussed with Sections 6. The tenancy for a limited purpose under Sec.8 & grounds of eviction of tenants under Sec.9 of the New Act are somewhat modified and a new provision has been made for a limited period of tenancy, which was not there in the Old Act. Likewise, the grounds of eviction are almost similar except comparative hardship etc. Apart from striking out the defence under Sec.13(j) of the Old Act, the most important addition in the New Act is about non-applicability of these provisions of

Chapter 2 and 3 of the Old Act on the premises as indicated below by virtue of clauses (i), (ii) and sub-clauses (a), (b) & (c) of clause (iii) of Section 3 of the New Act, which reads as under:

> **Section 3. Chapters II and III not to apply to certain premises and tenancies –** Nothing contained in Chapters II and III of this Act shall apply,-
>
> (i) to the new premises built or completed after the commencement of this Act and let out through a registered deed in which date of completion of such premises is mentioned;
>
> (ii) to the premises existing at the commencement of this Act, if let out after such commencement for a period of five years or more through a registered deed and the tenancy is not terminable before expiry of its duration at the option of the landlord;
>
> (iii) to any premises let out for residential purposes before or after the commencement of this Act, the monthly rent whereof is -
>
> (a) rupees seven thousand or more, in the case of the premises situated in the Municipal area of Jaipur City;
>
> (b) rupees four thousand or more, in the case of premises let out at places situated in the Municipal areas comprising the Divisional Headquarters, Jodhpur, Ajmer, Kota, Udaipur and Bikaner;
>
> (c) rupees two thousand or more, in case of premises let out at places situated in other Municipal areas to which this Act extends for the time being."

9. Rest of the sub-clauses of this Clause (iii) of Section 3 of the New Act were already existing in the Old Act. By excluding the premises built after commencement of this Act or premises

existing at the commencement of this Act and let out after such commencement for five years through registered deed and also premises let out for residential purposes for Rs.7000/- or more in municipal area of Jaipur City, Rs.4000/- or more at the Divisional Headquarters and Rs.2000/- or more in case of other municipal areas to which Act extends, the legislature has not transgressed its competence in making the law because it was a statutory right and not a vested right as it has been held in many judicial decisions, some of them are referred below.

10. In Melapur Club vs. State of Tamil Nadu reported in 2005 (12) SCC 752, it has been held that a benefit which has been granted under the Statute, cannot be a vested right and the same can be withdrawn by the legislature by enactment, both retrospectively and prospectively.

11. In Prabhakaran Nair vs. State of Tamil Nadu reported in AIR 1987 SC 2117, it has been held as under:

> "36.Tenants are in all cases not the weaker sections. There are those who are weak both among the landlords as well as the tenants. Litigations must come to end quickly. Such new Housing Policy must comprehend the present and anticipate the future. The idea of a National Rent Tribunal on an All India basis with quicker procedure should be examined. This had become an urgent imperative of today's revolution. A fast changing society cannot operate with unchanging law and preconceived judicial attitude."

12. In D.C.Bhatia vs. Union of India reported in 1995(1) SCC 104 while discussing the report of the National Urbanization and the objects of the Delhi Rent Control Act of 1958, the Hon'ble Supreme Court observed as under:

> "28. In order to strike a balance between the interests of the landlords and also the tenants and for giving a boost to house-building activity, the legislature in its wisdom has decided to restrict the protection of the Rent Act only to those premises for which rent is payable up to the sum of Rs.3500 per month and has decided not to extend this statutory protection to the premises constructed on or after the date of coming into operation of the Amending Act for a period of ten years. This is a matter of legislative policy. The legislature could have repealed the Rent Act altogether. It can also repeal it step by step. It has decided to confine the statutory protection to the existing tenancies whose monthly rent did not exceed Rs.3500.
>
> 29. In our view, it is for the legislature to decide what should be the cut-off point for the purpose of classification and the legislature of necessity must have a lot of latitude in this regard. It is well settled that the safeguard provided by Article 14 of the Constitution can only be invoked, if the classification is made on the grounds which are totally irrelevant to the object of the statute. But, if there is some nexus between the objects sought to be achieved and the classification, the legislature is presumed to have acted in proper may result in some hardship. But, a statutory discrimination cannot be set aside, if there are facts on the basis of which this statutory discrimination can be justified."

13. The same view in D.C.Bhatia's case (supra) was also reiterated in Parripati Chandrasekharrao v. Alapati Jalaiah reported in AIR 1995 SC 1781 and Ambalal vs. Sara Bhai

reported in 2001(8) SCC 397..

14. On the question of exclusion of premises from the operation of the Act, the Hon'ble Supreme Court has also recently held it to be a valid classification on the basis of economic criterion in Saraswat Cooperative Bank vs. State of Maharashtra reported in 2006(8) SCC p.520, wherein it has been held as under:

> "30.Although, earlier a view had been taken by this Court that prescribing such a standard or differentiating between categories of tenancies was violative of Article 14 of the Constitution, the subsequent view taken by this Court is that so long as the classification sought to be made was based on an intelligible differentia and had a nexus with the object sought to be achieved by the statute, the same would not offend the equality clause contained in Article 14 of the Constitution.
>
> 31. Resultingly, it is quite clear that it is within the legislative competence of the State to enact laws for the protection of certain sections of society on the basis of economic criteria and so long as it does not result in unreasonable classification, it is for the legislature to decide whom it should include or exclude from the application of such laws"

15. In the light of the aforesaid decisions and considering the Statement of Objects & Reasons of the Bill referred-to above, it transpires that the provisions of Chapters 1 to 4 dealing with the classification of tenants on economic criterion, restricting its protecting to particular premises, etc. is a policy decision based

on social justice and can never be termed as unjust, unreasonable or unfair so as to infringe Article 14 of the Constitution of India. Chapter 6 and 7 deals with the amenities and the miscellaneous provisions respectively, except non obstante clause under Section 32(3)(a) of repeal and saving, which will be discussed later on. Lastly, Chapter 5 is about the constitution of Tribunals whereby the jurisdiction has been taken away from the Civil Courts to that of Rent Control Tribunals. Part XIV A of the Constitution dealing with the Administrative & other Tribunals , prescribes under Clause (1) of Article 323B that appropriate legislature may, by law, provide for adjudication or trial by tribunals of any dispute, complaints or offences with respect to all or any of the matters specified in Clause (2) with respect to which such legislature has power to make laws. Sub clause (h) of Clause (2) of Article 323B has been inserted by the Constitution 75th Amendment Act of 1993, whereby the rent, its regulation, control and tenancy issues including the right, title & interest of landlord and tenants had been incorporated in it. Therefore, the validity of Chapter 5 of the New Act regarding constitution of the Rent Control Tribunals cannot be also termed as violative of Article 14 of the Constitution.

16. Fixing the criterion of applicability under the New Act for a specified rent rate and classifying tenants for residential &

commercial purposes on time demand, cannot be termed as violative of fundamental right, as the right conferred on the tenant under the rent Law is a protective or legal right under a statute which can be termed as a mere civil right and not a fundamental right and it is within the domain of the legislature to make such a classification of tenant and periodical revision of rent, economic criterion for applicability of the Act, constitution of the Tribunals to achieve the object for which enactment is made, etc. Thus, in no way, the provisions of the New Act can be termed as beyond the legislative competence and in violation of Article 14 of the Constitution. It is the wisdom of the legislature to make a policy based on the consideration of protecting the vested rights of the landlords on their lands and ensuring safeguards to the tenants against exorbitant rent rate.

17. Second & third set of present petitions relates to the validity of Section 32(3)(a) of the New Act and Section 6(1) & (3) to (5) of the Old Act vis-a-vis referring the decision of Khem Chand's case (supra) to the larger Bench in which Section 6(2) of the Old Act was declared ultravires, being violative of Article 14 of the Constitution of India.

18. It is contended by the learned counsel for the petitioners that by repealing the Old Act, a non obstante clause has been

inserted under the New Act vide Section 32(3)(a), whereby pending applications, suits or other proceedings have been saved, which shall be governed by the provisions of the Old Act as if the New Act has not come into force. By making so, a great anomaly and hardship has been caused to the tenants in the matter of fixation of standard rent. According to the learned counsel for the tenants, sub-sections (3) to (5) of Section 6 of the Old Act are subject to sub-section (2) of Section 6 and when sub-section (2) of Section 6 has been declared ultravires in Khem Chand's case (supra), an unfettered and arbitrary power has been given to the court under sub-section (3) of Section 6 of the Old Act to fix the standard rent for the similar premises in the same locality. Section 6(2) of the Old Act was a check on the remaining sub-sections of Section 6, but by striking down this provision, there is no check on the remaining provisions whereby the landlords started filing suits for enhancement of the rent throughout the Rajasthan demanding exorbitant high rates, as the provisions of the Section became unbriddled and tenants were compelled to vacate the premises.

19. The New Act was passed in 2001 but it came into force in April, 2003, therefore, between 31.3.1999 i.e. after striking down the Old Act in Khem Chand's case (supra) and till the applicability of the New Act on 1.4.2003, large number of suits

for increase of rent at exorbitant rate were filed and likewise the provisional rent under Section 7 of the Old Act was also fixed at abnormal high rates. Whereas in the New Act, the premises which were let out prior to 1.1.1950 have been treated to have been let out on that day and an annual increase of 5% has been provided which is revisable after every ten years. This is a just, reasonable & fair criteria & to put check on monopoly by landlords in increasing rent.

20.. Learned counsel has also cited certain examples as to how the rents were claimed in between this period and the Civil Courts passed the orders. Some of the examples are as follows:

> "(1) Raj kumar (Writ Petition No.5842/2004)
> Shop in question was taken on rent in Bhadwa Samvat Year 2043 at the rate of Rs.550/- pm. The landlord filed suit under Section 6 ofthe Old Act in May 2001 and claimed rent at thereate of Rs.8000/- per month.
> The Trial Court passed the decree for Rs.8000/-. As per Rent Act of 2001, rent in May 2001 will be Rs.1031/-
>
> (2) Pritam Singh (Writ Petitions No.3356/2004 and 5604/2004)
> House in question was taken on rent on 4th July, 1975 at the rate of Rs.555/- pm.
> The landlord filed a suit under Section 6 of the Old Act in July 2000 and claimed rent at the rate of Rs.30,000/- per month.
> As per Rent Act of 2001, rent in July 2000 will be Rs.1550/-.
>
> (3) Girdhari Lal (Writ Petition No.2014/2005)

Shop in question was taken on rent in 1984 at the rate of Rs.350/- per month.
The landlord filed an eviction suit on 29.07.1994. The Trial Court determined interim rent at the rate of Rs.600/- per month under Section 13(3) on 19.05.1997.
The landlord filed suit under Section 6 of the Old Act in September 2000 and claimed rent at Rs.8000/- pm.
In this suit, the learned Trial Court determined provisional rent Rs.4000/- on 31.10.2004.
As per Rent Act of 2001, rent in September 2000 will be Rs.605/-.

(4) Jugal Kishore (Writ Petition No.4773/2004)
Shop in question was taken on rent on 1.3.1987 at the rate of Rs.811/- per month with the stipulation that after five years, rent will be increased by 10%.
The landlord filed suit under Section 6 of the Old Act in September, 1999 and claimed rent at the rate of Rs.12,000/- per month.
As per Rent Act of 2001, rent in September, 1999 will be Rs.1304/-.

(5) Jugal Kishore (Writ Petition No.2159/2006)
Shop in question was taken on rent on 1.7.1994 at the rate of Rs.900/- per month with the stipulation that after three years, rent will be increased by 15%.
The landlord filed suit under Section 6 of the Old Act in September, 1999 and claimed rent at the rate of Rs.12,000/- per month.
As per Rent Act of 2001, rent in September, 1999 will be Rs.1125/-."

21. It is also contended that by inserting the saving clause for pending cases in fixation of standard rent in the New Act, if there are two shops of one landlord in the same locality and let out prior to March, 1999 for example at a monthly rent of Rs.1,000/- and before this date, if landlord enhances the rent of one shop to Rs.5000/- either by mutual agreement or otherwise keeping in view the front, rear & side portion of the shop & filed a suit for

fixation of standard rent against another tenant after 31.3.1999, when the old Section 6(2) was struck down claiming rent of Rs.5000/- as equal to other shop, though it was not warranted at the time when the rate of same premises shop was increased to Rs.5000/-, the Court may decide the application by virtue of Sec.6(3) of the Old Act in view of saving clause of the New Act at the rate of Rs.5000/-, whereas under the New Act, he has to pay only 5% increase of the agreed rent. According to learned counsel for the petitioners, large number of such type of cases have been instituted in various courts and are pending and by virtue of this saving clause, a great anomaly and inconsistency has been created.

22. Not only this, a tenant has no right to file an application for revision of rent under the New Act and on the contrary, a suit filed by the tenant for fixation of standard rent under the Old Act on account of excessive rate of rent is pending on the date of coming into force of the New Act and after coming into force of this New Act, if landlord files a suit for revision of rent under Section 6 of the New Act, in such a situation, the civil Court will decide the application of the tenant under Section 6 of the Old Act and the Tribunal will decide the application of the landlord for revision of rent under Section 6 of the New Act. Decision of two courts on same issue is bound to result in miscarriage of justice.

23. This type of legislative drafting resulting in inconsistency & anomaly, without examining the corresponding effect, dilutes the course of justice. In such a course, it is for the authority having power to review to see that whether the law keeps a balance between the rival interests and is not unjust to one and give disproportionate benefit and protection to another. The Court has to strike a balance either by harmonizing the two provisions or to strike down that provision which is not just, reasonable and fair. This task is based on the sound principles of interpretation and construction of a statute. While interpreting the Statute, the Court has to find the true sense of any force of words and whereas in construing a Statute, the Court has to draw conclusions about the respective subjects that are beyond the direct expression of the text. Though various authors have attempted to draw conclusions by distinguishing between the interpretation and construction but by passage of time and as a principle of stare decis which is a doctrine based on precedents, construction is the means of interpretation and interpretation is the end.

24. Keeping this broad principle in mind, if we turn to the controversy involved in the present bunch of petitions, three provisions relating to the Old Act and the New Act are

reproduced below:

"SECTION 6 OF THE OLD ACT

Section 6 – Fixation of standard rent – (1) Where no rent has been agreed upon or where for any reason the rent agreed upon is claimed to be (low or) excessive, the landlord or the tenant may institute a suit in the lowest court of competent jurisdiction for fixation of standard rent for any premises.

(2) The Court shall, after holding such summary inquiry as it may consider just and necessary, determine the standard rent for such premises and shall, in doing so, act according to the following principles, namely -

(a) Where the premises are let for residential purposes or for any of the purposes of the public hospital, aushadhalaya or dawakhana, recognised educational institution, a public library or reading room or any orphanage the standard rent shall not exceed the basic rent increased by fifty percent thereof; and

(b) Where the premises are let for any other purpose, the standard rent shall not exceed two and a half times the basic rent thereof :

Provided that where the premises have been (First) let after the first day of January, (1965), the standard rent shall not exceed the basic rent thereof :

Provided further that where the fair rent or standard rent for any premises has been determined or redetermined (by any court under this Act or) by any authority under any law or order repealed by section 30 before the commencement of the Rajasthan Premises (Control of Rent and Eviction Amendment) Ordinance, 1975 and the amount of such fair rent or standard rent is the same as would be determinable as standard rent by the Court under this section, the fair rent or standard rent previously determined or redetermined, shall not be disturbed.

(3) Where for any reason it is not possible to determine the standard rent of any premises on the principles set out in sub-sec.(2); the Court shall determine such rent, having

due regard to (xxxx) the prevailing rent or standard rent for similar premises in the same locality, the various amenities (such as electricity, water connection, sanitory fittings, and the like) attached to the premises, the cost of construction, maintenance and repairs thereof, the special reasons, if any; proved by the plaintiff and other relevant considerations.

(4) In fixing the standard rent for any premises under this section, the Court shall determine such rent in respect of the premises in an unfurnished state but may also determine additional charge to be payable on account of fittings or furnishing and it shall be lawful for the landlord to recover such additional charge from the tenant.

(5) In every case in which the Court determines the standard rent of any premises under this section it shall appoint a date from which the standard rent so determined shall be deemed to have effect :

(Provided that such date shall, in the case of a tenant who institutes a suit under this section after the expiration of six months from the commencement of his tenancy on the ground of the rent agreed upon being excessive, be the date of the institution of such suit or such later date as the Court in the circumstances of the case deem reasonable.)"

SECTION 6 & 7 OF THE NEW ACT

CHAPTER – II
REVISION OF RENT

Section 6. Revision of rent in respect of existing tenancies.-(1) Notwithstanding anything contained in any agreement, where the premises have been let out before the commencement of this Act, the rent thereof shall be liable to be revised according to the formula indicated below:-

(a) where the premises have been let out prior to 1st January, 1950, it shall be deemed to have been let out on 1st January, 1950 and the rent payable at that time shall be liable to be increased at the rate of (5%) per annum and the amount of increase of rent shall be merged in such rent after ten years. The amount of rent so arrived at shall again liable to be increased at the rate of (5%) per

annum in similar manner upto the year of commencement of this Act.

(b) Where the premises have been let out on or after 1st January, 1950, the rent payable at the time of commencement of the tenancy shall be liable to be increased at the rate of (5%) per annum and the amount of increase of rent shall be merged in such rent after ten years. The amount of rent so arrived at shall again be liable to be increased at the rate of (5%) per annum in similar manner upto the year of commencement of this Act.

(2) Notwithstanding anything contained in sub-section (1), where the period of ten years for merger of increase of rent under sub-section (1) is not-completed upto the year of the commencement of this Act, the rent at the Rate of (5%) per annum shall be increased upto the year of the commencement of this Act and amount of increase of rent shall be merged in rent.

(3) The rent arrived at according to the formula given in Sub-sections (1) and (2) shall, after completion of each year from the year of commencement of this Act, again be liable to be increased and paid at the rate of 5% per annum and the amount of increase of rent shall be merged in such rent after ten years. Such rent shall further be liable to be increased at similar rate and merged in similar manner till the tenancy subsists.

(4) The rent revised as per formula given under sub-section (1) or sub-section (2) shall be payable, after the commencement of this Act, from the date agreed upon between the landlord and the tenant or where any petition is filed in a Rent Tribunal, from the date of filling of such petition.

Section 7. Revision of rent in respect of new tenancies.- (1) In the absence of any agreement to the contrary, the rent of the premises let out after the commencement of this Act shall be liable to be increased at the rate of 5% per annum and the amount of increase of rent shall be merged in such rent after ten years. Such rent shall further be liable to be increased at the similar rate and merged in similar manner till the tenancy subsists.

(2) Any agreement for increase of rent in excess of 5% per annum shall be void to that extent.

SECTION 32(3)(A) OF THE NEW ACT

Section 32. Repeal and saving.-
(1) .....
(2) .....
(3) Notwithstanding the repeal under Sub-section (1) -

(a) all applications, suit or other proceedings under the repealed Act pending on the date of commencement of this Act before any Court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of one hundred and eighty days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding pending under the repealed Act with liberty to file fresh petition in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this act and for the purposes of limitation such petition shall, if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date of which the suit, out of which such appeal or proceeding originated, was filed."

25. It is a settled rule of law that when a statute is repealed, it is to get rid of certain obsolete matters in order to lighten the burden of ever increasing spate of legislations. When the repeal is followed by a new legislation on the same subject, the Court will also see as to whether a different intention appears or not? This repeal may be either express or implied. In repeal of a Statute, the Court loses jurisdiction of the suit pending, unless

this right is expressly saved by the repealing Act.

26. In re R., reported in 1906 (1) Chancery Division p.730, it has been observed as under:

> "Where you have a repeal and you have also a saving clause, you have to consider whether the substituted enactment contains anything incompatible with the previously existing enactment. The question is, Aye or No, is there incompatibility between the two? And in those cases the judges, in holding that there was a saving clause large enough to annul the repeal, said that you must see whether the true effect was to substitute something incompatible with the enactment in the Act repealed; and that, if you found something in the repealing Act incompatible with the general enactments in the repealed Act, then you must treat the jurisdiction under the repealed Act as pro tanto wiped out."

27. This dictum was followed from the decisions in In re Busfield, reported in 32 Ch.D.123 and Hume v. Somerton, reported in 25 Q. B. D. 239.

28. On the controversy of repeal & saving as existing in the present petitions, learned counsel for the petitioners Mr.M.C.Bhoot and Mr.Arun Calla, learned counsel for the intervener, also relied upon certain citations referred below:

29. In Aswini Kumar vs. Arabinda Bose reported in AIR 1952

SC 369, it has been held as under:

> "27.Nor can we read the non obstante clause as specifically repealing only the particular provisions which the learned Judges below have been at pains to pick out from the Bar Councils Act and the Original Side Rules of the Calcutta and Bombay High Courts. If, as we have pointed out, the enacting part of S.2 covers all Advocates of the Supreme Court, the non obstante clause can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment, although the draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it."

30. In Dayawati vs. Inderjit reported in AIR 1966 SC 1423, Hon'ble Hidayatullah J. observed as under:

> "Courts have looked with disfavour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even after the judgment of the Court of first instance. The distinction between laws affecting procedure and those affecting vested rights does not matter when the Court is invited by law to take away from a successful plaintiff, what he has obtained under a judgment."

31. In Northern India Caterers (Pvt.) Ltd. vs. State of Punjab

reported in AIR 1967 SC 1581, it has been held as under:

> "The rule of construction is that where a statute provides in express terms that its enactment will repeal an earlier Act by reason of its inconsistency with such earlier Act, the latter may be treated as repealed. Even where the later Act does not contain such express words, if the co-existence of the two sets of provisions is destructive of the object with which the later Act was passed, the Court would treat the earlier provision as impliedly repealed. A later Act which confers a new right would repeal an earlier right if the fact of the two rights co-existing together produces inconvenience, for, in such a case, it is legitimate to infer that the legislature did not intend such a consequence. If the two Acts are general enactments and the later of the two is couched in negative terms, the inference would be that the earlier one was impliedly repealed. Even if the later statute is in affirmative terms, it is often found to involve that negative which makes it fatal to the earlier enactment."

32. In Vishwant Kumar vs. Madanlal Sharma reported in 2004 (4) SCC p.1, it has been held as under:

> "What is unaffected by repeal is a right acquired or accrued under the Act. Till the decree is passed, there is no accrued right. The mere right existing on date of repeal to take advantage of the repealed provisions is not a right accrued within Section 6(c) of the General Clauses Act. Further, there is a vast difference between rights of a tenant under the Rent Act and the rights of the landlord."

33. In Karam Singh Sobti vs. Sri Pratap Chand reported in AIR 1964 SC 1305, while interpreting the provisions of the Delhi & Ajmer Rent Control Act, 1952 and Delhi Rent Act 1958, the

majority view was that the term "shall have regard to the provisions of this Act" means the Court shall have regard to the provisions of the New Act which makes a provision with the non obstante clause. In that case, the non obstante clause under Section 57 of the Control Act of 1958 while repealing the Delhi and Ajmer Rent Control Act, 1952 was as follows:

> "57 (1) The Delhi and Ajmer Rent Control Act, 1952, in so far as it is applicable to the Union territory of Delhi, is hereby repealed.
>
> (2) Notwithstanding such repeal, all suits and other proceedings under the said Act pending, at the commencement of this Act, before any court or other authority shall be continued and disposed of in accordance with the provisions of the said Act, as if the said Act had continued in force and this Act had not been passed:
>
> Provided that in any such suit or proceedings for the fixation of standard rent or for the eviction of a tenant from any premises to which section 54 does not apply, the court or other authority shall have regard to the provisions of this Act:
>
> Provided further that the provisions for appeal under the said Act shall continue in force in respect of suits and proceedings disposed of thereunder."

It was a case of subletting prior to coming into force of the New Act and the respondent landlord was entitled to benefit of the Old Act of 1952 and first proviso to sub-section (2) of Section 57 of the New Act of 1958 was not coming in the way.

34. In Malpe Vishwanath Acharya vs. State of Maharashtra reported in AIR 1998 SC 602, the Hon'ble Supreme Court while examining the validity of the Bombay Rent Control Act, 1947, observed as under:

> "26. It is true that whenever a special provision, like the Rent Control Act, is made for a section of the society, it may be at the cost of another section, but the making of such a provision or enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largess or windfall to another, without appropriate corresponding relief, then the continuation of such a law which necessarily or most likely leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary."

In this cited case, the existing provisions of the Bombay Rent Act were held to be unreasonable and arbitrary but they were not struck down because these provisions came to an end on 31.3.1998 and the new Model law was framed based on the national policy adopted in pursuance to the resolution of the State Ministers for housing in 1992. The Court further observed that the existing provisions provided the `pagri' system leading to lawlessness and undermining the authority of law. While relying upon this decision, Section 6(2) of the Old Act was struck down by the Division Bench of this Court in Khem Chand's case (supra).

35. Upon crystallization of the decisions referred-to above, now it is a well settled proposition of law that when a Statute is repealed, the Court loses jurisdiction of the suit pending under the repealed Act, as if it had never been passed, except for the purpose of those actions which were commenced, prosecuted and conducted whilst it was an existing law. Unconditional repeal of a Statute without a saving clause stops actions in all suits in which the final relief has not been granted as provided-for in Section 6 of the General Clauses Act. To overcome this hardship of common law, the legislature thought it fit from time to time that when both repeal and saving clauses are existing in the enactment and the Court finds that there is an irreconcilable inconsistency or incompatibility, the Court should treat the jurisdiction under the repealed Act as "protanto wiped out". This is commonly known as implied repeal, as distinguished from the express repeal having coextensive with the power of legislature to enact the law. The doctrine of implied repeal is generally not favoured unless the saving clause is full and clear.

36. While discussing the scope of implied repeal, the Hon'ble Supreme Court in Harshad S.Mehta vs. State of Maharashtra reported in 2001(8) SCC 257, held as under:

> "There is a presumption against a repeal by implication. The reason for the presumption is that the legislature while enacting a law has a complete knowledge of the existing laws on the subject-matter and, therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. The burden to show that there has been a repeal by implication lies on the party asserting it. Courts lean against implied repeal. If by any fair interpretation, both the statutes can stand together, there will be no implied repeal. If possible, implied repeal shall be avoided."

37. The presumption against a repeal by implication is overthrown, if the new law is inconsistent with or repugnant to the old law, whereby two Statutes cannot be reconciled on reasonable construction or hypothesis. There is also a presumption in the case of implied repeal that such repeal affects only substantive rights and not the procedure. Here, it will be relevant to refer the words of Craze on Statutory Law reported in Thakkar Damji Raghavji vs. Jamiyatram reported in AIR 1954 Saurashtra 77, which runs as under:

> "6. When an act is repealed, it must be considered except as to transactions past and closed, as if it had never existed. Similarly, if an Act gives a right to do anything such as the fixation of the standard rent by the Samiti, the thing to be done, if not completed before the Act is repealed, must upon the repeal of the Act be left in status quo."

38. Declaring law in the light of above citations, the present petitions if looked with Section 32 of the New Act, which deals

with the repeal and saving clauses, provides a non obstante clause under sub-section (3) as referred-to above and according to this, all suits or other proceedings under the repealed Act pending on the date of commencement of the Act, shall be continued and disposed-of in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and the New Act had not been enacted. However, a right was given to the plaintiff to withdraw the suit or appeal or other proceedings under the Old Act within a period of 180 days of coming into force of the New Act and to file a fresh petition in respect of the same subject matter in accordance with the provisions of the New Act and that limitation was provided to be 270 days.

39. This non obstante clause, if read with Section 6 of the Old Act for fixation of standard rent and Section 6 of the New Act for revision of the rent with reference to Section 29 of the New Act dealing with the overriding effect, following anomaly, irreconcilable inconsistency and incompatibility emerges, in addition to the five instances, referred in preceding para 20 (supra), whereby there are instances of abnormal rise in fixation of standard and provisional rents by the Courts after coming into force of the New Act:

40. Under the non obstante clause provided-for in Section 32 (3)(a) of the New Act, pending suits for fixation of rent either standard or provisional, shall be governed by the repealed Act, whereas under Section 29 of the New Act, the provisions of the New Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. If these two provisions are read together and the situation arises where the suit of same premises is pending for fixation of standard rent filed by the tenant prior to coming into force of the New Act which is for reducing the rent as agreed upon, that suit will have to be decided by the court under the Old Act but after coming into force of the New Act, if the landlord files a suit or application for revision of rent under Section 6 of the New Act in accordance with the formula of 5% per annum increase of the agreed rent then what will be the fate of the suit filed by the tenant, has not been answered in the saving clause. This apparent anomaly whereby course of justice is diluted in disposal of both the petitions; one filed under the Old Act by the tenant and another under the New Act by the landlord, will lead to a direct conflict between the two suits arising out of the saving clause under the New Act.

41. By striking down Section 6(2) of the Old Act in Khem Chand's case (supra), a discretionary power has been given to

the Court to fix standard rent on the basis of prevailing market rate of the similar premises in the same locality by virtue of sub-section (3) to (5) of Section 6 of the Old Act, whereas sub-sec. (3) of Section 6 of the Old Act says that the Court shall determine the rent, if for any reason, it is not possible to determine the same on the principles set out in sub-sec.(2), which provides a clause of increase of two and a half times of the basic rent and 50% in case of residential or other purposes. When sub-sec.(3) is subject to sub-section (2) of the Old Act and sub-section (2) has been struck down, the power of fixation of the standard rent left to the Court, may result in arbitrariness and the instances have been quoted as referred-to above that after striking down sub-section (2) of Section 6 of the Old Act on 31.3.1999, large number of suits have been filed & decided for fixation of exorbitant rent under the garb of standard rent till the applicability of the New Act.

42. Enacting non obstante clause in Section 32(3)(a) of the New Act, three categories of tenants have emerged i.e. (i) prior to 31.3.1999 when Khem Chand's case (supra) was decided; (ii) Between 31.3.1999 to 1.4.2003 and (iii) after 1.4.2003 when the New Act came into force. Had the draftsman of the present Bill looked into various provisions of the Model laws framed in the Country on rent matters and the decision of Khem Chand's

case (supra) in proper perspective, this difficulty in harmonizing both the Acts i.e. the Old & the New Acts, would not have emerged by way of these petitions. To quote an example of the Delhi Rent Control Act of 1958, Section 57 of this Act clearly makes a proviso in the non obstante clause that pending proceedings for fixation of standard rent, the new Act shall apply but this provision was not inserted in the non obstante clause contained in sub-section (3) of Section 32 of the Act.

43. Though, we are not questioning the policy of the legislature in enacting the new law which is a social legislation, being enacted from time to time keeping in view the paucity of accommodation and market value of the rupee but as discussed above, when incompatibility or irreconcilable inconsistency emerges in interpreting the new law, the Court has to harmonize provisions of both the Old & the New Acts. We, therefore, without striking down any of the provisions of the Old Act and the New Act, deem it proper that non-obstante clause contained in Section 32(3)(a) which saves the pending proceedings should be read with Section 29 of the New Act, which gives effect to the provisions of the New Act, notwithstanding anything inconsistent in any other law.

44. The fixation of standard rent is a substantive right and the

saving clause cannot restrict a substantive right. It merely affects the procedure as held by the Hon'ble Supreme Court in Northern India Caterers Ltd's case (supra) in which it has been held that if by repeal, two rights co-exist together and produce inconvenience then the Court should legitimately infer that the legislature did not intend such a consequence. In such a case, the Court should give effect to the new provisions by harmonizing both the Statutes. This is the only and sound rule of construction to avoid anomaly & irreconcilable inconsistency. That is why, it is said that judges declare the law by ascertaining legislative intent and are not to make it.

45. This rule of construction has been declared by Lord Coke in Heydon's case which says that for the true interpretation of all the Statutes, the Court has to discern & consider the four things viz; (i) what was the Common Law prior to the Act? (ii) what was the mischief & effect for which the Common Law did not provide? (iii) what remedy, the legislature has resolved and (iv) the true reason of the remedy and then to make a construction, as shall suppress the mischief and advance the remedy.

46. Therefore, while drawing the above conclusions on the true intent of Section 29, which is an internal aid for construction & Section 32(3)(a) of the New Act vis-a-vis Section 6 of the Old

Act, we are left with no other alternative except to cure the anomaly, absurdity, inconsistency and incompatibility by giving true effect to the provisions of the New Act in the light of the observations made above.

47. Consequently, we hold that the New Act is not violative of Article 14 of the Constitution and is a valid social legislation. However, we also hold that the non obstante clause contained in Section 32(3)(a) of the New Act, saving pending proceedings, shall not be applicable in case of fixation of standard rent or provisional rent under sections 6 and 7 of the Old Act as having been impliedly repealed and shall be governed by the provisions of the New Act without declaring Section 6 of the Old Act and Section 32(3)(a) of the New Act to be ultravires to the Constitution of India or referring the decision of Khem Chand's case (supra) to a larger Bench. Accordingly, we dispose-of these writ petitions and direct the concerned Courts to dispose of the matters in the light of the above directions by reviewing their impugned orders, if they are inconsistent with the decision on the subject with no order as to costs.

(DEO NARAYAN THANVI), J. **(P.B.MAJMUDAR), J.**

RANKAWAT JK, PS

PER HON'BLE MAJMUDAR, J. :

I have gone through the judgment prepared by my learned brother Thanvi, J. and I agree with the ultimate view taken by him by upholding the constitutional validity of the Rajasthan Rent Control Act, 2001 (New Act) in toto. The old Rent Control Act was enacted at the time when there was great scarcity of accommodation in big cities, in order to mitigate the difficulties faced by the tenants in getting rented accommodation at reasonable rates. However, the old Act continued for a very long time though it was enacted considering the prevailing circumstances at that time. With the change of time, considering the need prevailing in the society, the legislature felt it necessary to amend substantially the provisions of the old Act and with that object, the new Act has been enacted, in which also protection has been made available to the tenants keeping in mind the balance between the landlord and the tenant. Therefore, in my view, none of the provisions of the New Act can be said to be unconstitutional or ultra vires in any manner and the enactment of the New Act is accordingly required to be upheld. I, accordingly, concur with the ultimate view expressed by my learned brother Thanvi, J.

(P.B.MAJMUDAR), J.

Pramod, Jr.P.A.